

MOTION FILED
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No. 87-1119

In The
Supreme Court of the United States
October Term, 1987

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,

v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,
AND
DePAUL HOSPITAL,
Respondents.

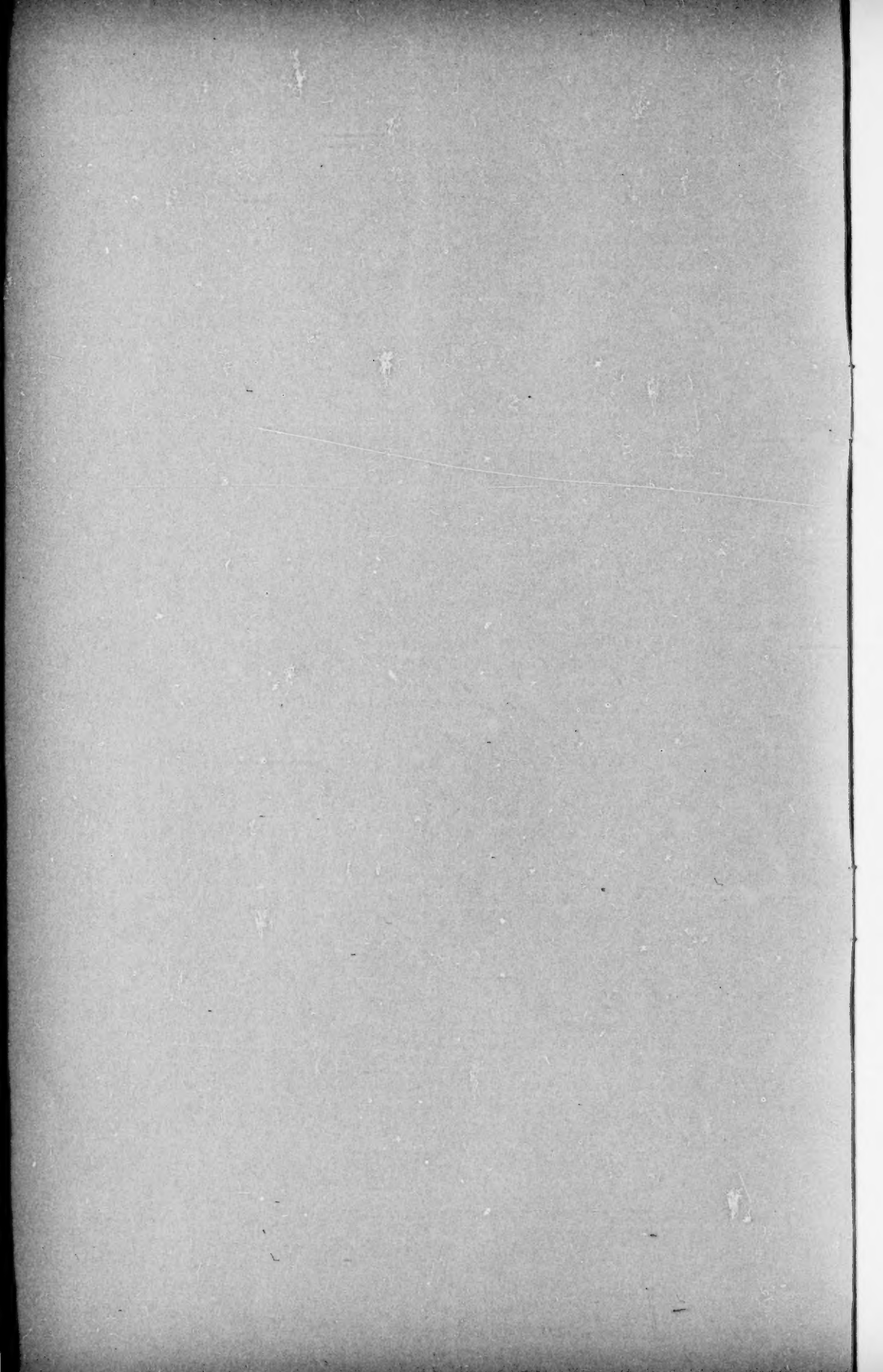
On Petition For A Writ Of Certiorari To The
Supreme Court Of The State Of Wyoming

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND
BRIEF AMICI CURIAE OF DEAN CROCKER, M.D., HARRY J.
LOWE, M.D., MICHAEL STANTON-HICKS, M.D., DR. PETER
JOHNSON, DR. GAITHER B. EVERETT, DR. CHARLES KEND-
RICK, DR. PETER M. LISTRO, DR. DAN ROELOFS, DR. AN-
THONY LaSALLE, DR. PAUL HUBBELL, DR. VICTOR SPIRO, DR.
DANIEL L. ORR II, DR. JOHN H. HUNTER, DR. RANDALL D.
DAVIES, DR. MILTON D. BOWLES AND DR. JAMES FRANK-
LIN SHAW IN SUPPORT OF PETITIONER

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10 pp



Motion for Leave to File Brief Amici Curiae

Consent having been refused by at least one of the Respondents, *Amici Curiae* respectfully move the Court to permit the filing of the attached Brief *Amici Curiae* of Dean Crocker, M.D., et al., for the following reasons:

1. *Amici's* interest in this case is to help the Petitioner establish his right and the right of other dentist anesthesiologists under the Constitution of the United States to practice general anesthesiology throughout the United States in the public interest.

2. *Amici* believe that the parties have not and cannot adequately address the fundamental factual basis of Petitioner's Petition for a Writ of Certiorari, namely, that dentist anesthesiologists are as qualified by training and experience as M.D. anesthesiologists to administer general anesthesiology. *Amici* are M.D. anesthesiologists who are past or present chiefs of anesthesiology residency programs, dentist anesthesiologists who train both M.D. and dentist anesthesiologists in their residencies, and dentist anesthesiologists similarly situated to Petitioner, who in some cases successfully, and in other cases unsuccessfully, have lawfully sought to practice general anesthesiology. Together they help to establish, as Petitioner alone cannot, that dentist anesthesiologists are as qualified by training and experience as M.D. anesthesiologists to administer general anesthesiology.

Respectfully submitted,

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Dr. Charles Kendrick
Dr. Peter M. Listro
Dr. Dan Roelofs
Dr. Anthony LaSalle
Dr. Paul Hubbell
Dr. Victor Spiro
Dr. Daniel L. Orr II
Dr. John H. Hunter
Dr. Randall D. Davies
Dr. Milton D. Bowles
Dr. James Franklin Shaw

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Brief Amici Curiae of Dean Crocker, M.D., ET AL.

INTEREST OF THE AMICI CURIAE

There are three categories of *amici* who wish to appear here: M.D. chiefs of anesthesiology residencies who have trained both dentist and physician anesthesiologists; dentist anesthesiologists who are now professors of anesthesiology in accredited residencies; and a few of the dentist anesthesiologists similarly situated to Petitioner.

Dean Crocker, M.D., is the Chief of Anesthesia and Director of Residency and Surgical Anesthesiology at Boston City Hospital. Harry J. Lowe, M.D., is former Chairman of Anesthesia, University of Chicago, and currently serves as clinical professor of anesthesiology at the Los Angeles County, University of Southern California Medical Center. Michael Stanton-Hicks, M.D., is former Chairman of Anesthesiology at the University of Massachusetts and the University of Colorado Health Sciences Center. Dr. Stanton-Hicks is currently on sabbatical teaching anesthesiology at Der Johannes Gutenberg Universitat, Mainz, Federal Republic of Germany.

These *amici* have directed anesthesia residencies at their respective institutions and have trained physicians and dentists to equal competency to serve as general surgical anesthesiologists. These *amici* are aware that the equally competent dentist anesthesiologists often are unable to practice the science for which they were trained due

to widespread misunderstanding of the training given and an arbitrary bias generally held by some physicians against dentist anesthesiologists.

Dr. Peter Johnson is a dentist anesthesiologist serving as an associate professor of anesthesiology at the University of Illinois. Dr. Gaither B. Everett¹ is a dentist anesthesiologist and associate professor of anesthesiology at the University of Cincinnati. Drs. Charles Kendrick and Peter M. Listro are dentist anesthesiologists and associate professors of anesthesiology at Boston City Hospital. Dr. Dan Roelofs is a dentist anesthesiologist and assistant professor of anesthesiology at the University of Kansas, and Chief of Anesthesia at the Kansas City Veteran's Administration Medical Center.

Dr. Anthony LaSalle is a dentist anesthesiologist serving as Chief of Anesthesiology at the Humana Medical Center, Overland Park, Kansas.

Additionally, Drs. Paul Hubbell,² Victor Spiro,³ Daniel L. Orr II, John H. Hunter, Randall O. Davies, Milton D. Boles and James Franklin Shaw⁴ are a few of the dentist anesthesiologists similarly situated to Petitioner in this action.

¹ Drs. Everett and Spiro have unsuccessfully challenged state laws limiting their practices. *Everett v. State of Washington*, 99 Wash.2d 264, 661 P.2d 588 (1983); *Spiro v. Highlands General Hospital*, 489 So.2d 802 (Fla. App. 1986).

² Drs. Hubbell and Shaw are currently litigating the denial of their rights to practice anesthesiology in Louisiana and Tennessee, respectively.

³ See Footnote 1.

⁴ See Footnote 2.

The collective *amici* wish to make known to the Court that Petitioner's circumstance is most certainly not an isolated occurrence.

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SUMMARY OF THE ARGUMENT

Dentist anesthesiologists are as qualified by training and experience as M.D. anesthesiologists to administer general anesthesiology. The decision of the Supreme Court of Wyoming in this case prohibiting dentist anesthesiologists from so doing ignores this reality and violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States by applying a classification not rationally related to the goal of the furtherance of the public health, safety, and welfare.

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ARGUMENT

Throughout the over 100-year history of anesthesiology in the United States, dentists have made significant contributions to the science. Dr. Horace Wells, a dentist, was the founder of professional anesthesiology. His work with nitrous oxide as a pain killer and anesthetic agent began in 1844.

The first surgical procedure under general anesthesia was performed at Massachusetts General Hospital in 1846. The anesthesia was administered by Dr. William Thomas Green Morton, a dentist.

From the inception of anesthesiology as a science and a specialty, dentists have been continuously involved in the practice and teaching of anesthesiology, as well as major contributors to the advancement of the science through research and professional dissemination of their findings.

Anesthesia techniques range from the relatively simple to the complex in medicine and dentistry, but in both cases the effect of general anesthesia is upon the whole body of the patient.

For the continued scientific advancement and professional interaction between sciences which ultimately benefit mankind, modern anesthesiology residencies recognize the need to train dentists and physicians who are needed to practice anesthesiology to equal competency.

Dentists who have been so trained have met with mixed success in pursuit of the practice of their specialty. Hence, while Petitioner here is authorized to practice in the Veterans Administration hospitals, which recognize his competency, he is precluded in private hospitals where privileges are granted by those against whom he would compete. *Amicus* Everett, denied the ability to practice anesthesiology in the State of Washington, now teaches anesthesiology to physicians who will suffer no such bar.

The decision of the Wyoming Supreme Court demonstrates an inappropriate constitutional analysis which perpetuates a bias which each of the dentist anesthesiologist *amici* has experienced.

The flaw in the Wyoming decision is that it flows from an incorrect, and constitutionally deficient, premise. The decision is based upon the necessary finding that a rele-

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vant distinction exists between a fully trained dentist anesthesiologist and a physician anesthesiologist to administer non-dental general anesthesia.

In *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432 (1985), this Court announced the rule that under the appropriate test for determining the constitutionality of a legislative classification a court may not rely upon any conceivable justification in support of the classification. Rather, the court must take the next step to determine whether the classification, in fact, rationally furthers the stated goal.

Thus, for example, the Court rejected the rationale offered that prohibition of group homes for the mentally retarded would reduce congestion where equally congestive uses were allowed. *Cleburne*, 473 U.S. 449-450. The Wyoming decision fails to recognize and follow this analysis in a subtle but crucial way.

By assuming, without disclosing, a state of facts which encompasses a relevant distinction between dentist anesthesiologists and physicians who would practice anesthesiology, the Wyoming Supreme Court announced that there exists a rational basis which supports the classification. To announce that there is a difference between dentists and physicians is no more satisfactory, in equal protection analysis, than the difference recognized between retarded people and fraternity members in *Cleburne*. Just as the goal of reducing congestion was not rationally served by the City of Cleburne ordinance, the goal of protecting the public health, safety and welfare, forwarded by Wyoming, is not furthered by the exclusion of fully competent practitioners of anesthesiology.

Because the Wyoming decision is based upon a demonstrably false premise, the classification is not rationally related to the legitimate goal of the furtherance of public health, safety and welfare. Simultaneously, the Wyoming decision perpetuates an unsupportable bias which adversely impacts upon each of the *amici* and the general public which they are competent and qualified to serve.

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CONCLUSION

For the reasons stated herein, *Amici Curiae* respectfully urge the granting of the Petition.

Respectfully Submitted,

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